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## **DEPARTMENT OF COMMERCE**

### **Bureau of Industry and Security**

**15 CFR Parts 738, 740, 742, 744, 772, and 774**

**[FR Doc. 2014-18064]**

**RIN 0694-AD58**

### **Implementation of Understandings Reached at the 2005, 2012, and 2013 Nuclear Suppliers Group (NSG) Plenary Meetings and a 2009 NSG Intersessional Decision; Additions to the List of NSG Participating Countries; Correction**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Bureau of Industry and Security (BIS) published a final rule in the *Federal Register* on Thursday, August 7, 2014 (79 FR 46316), that amended the Export Administration Regulations (EAR) to implement the understandings reached at the 2005, 2012, and 2013

Nuclear Suppliers Group (NSG) Plenary meetings. That final rule also amended the EAR to implement a decision adopted under the NSG intersessional silent approval procedures, in December 2009, and to reflect the status of Croatia, Estonia, Iceland, Lithuania, Malta, Mexico, and Serbia as participating countries in the NSG. In that final rule, the amendatory instruction for the EAR supplement that lists “Country Groups” contained an error with respect to Mexico. In addition, the amendments to Export Control Classification Number (ECCN) 6A203 in the August 7, 2014, final rule inadvertently omitted the controls that apply to certain radiation-hardened TV cameras and lenses therefor. This document amends the EAR to correct these errors.

Finally, the contact information in the preamble of the August 7, 2014, NSG Plenary rule contained an incorrect telephone number and the saving clause in the preamble omitted specific instructions concerning certain items newly controlled under ECCN 3A225. This document amends the preamble of the August 7, 2014, NSG Plenary rule to correct these errors.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], and the corrections herein are applicable beginning August 7, 2014.

**ADDRESSES:** Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to [Jasmeet\\_K\\_Seehra@omb.eop.gov](mailto:Jasmeet_K_Seehra@omb.eop.gov), or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, N.W., Room 2705, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Steven Clagett, Director, Nuclear and Missile Technology Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482-1641.

**SUPPLEMENTARY INFORMATION:**

On August 7, 2014, the final rule titled “Implementation of Understandings Reached at the 2005, 2012, and 2013 Nuclear Suppliers Group (NSG) Plenary Meetings and a 2009 NSG Intersessional Decision; Additions to the List of NSG Participating Countries” was published in the Federal Register (79 FR 46316). That final rule contained certain errors and omissions, which are described below. This final rule amends the preamble of the August 7, 2014, final rule and the Export Administration Regulations (EAR) to correct these errors and omissions.

***Technical Amendments to the Preamble of the August 7, 2014, NSG Plenary Rule.***

*Update to Contact Information.*

The preamble of the August 7, 2014, final rule contained an incorrect telephone number under the contact information for Steven Clagett, Director, Nuclear and Missile Technology Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security. This document correctly identifies the telephone number as: (202) 482-1641.

*Extension of Saving Clause provisions for certain ECCN 3A225 items.*

The preamble of the August 7, 2014, final rule omitted from the Saving Clause specific instructions concerning certain items that were added to ECCN 3A225 by the rule. This document amends the Saving Clause by adding a new paragraph, immediately following the first paragraph, to provide specific instructions for exports and reexports of these ECCN 3A225 items. This amendment will provide industry with additional time in which to adjust their export control programs to the new export licensing requirements that resulted from the removal of the “harmonic distortion parameter” that was in ECCN 3A225.c prior to August 7, 2014. The removal of this parameter resulted in adding to ECCN 3A225 a whole class of widely used and distributed industrial equipment that was previously EAR99. Please note that all other EAR license requirements and prohibitions affecting these items continue to apply (e.g., the end-user/end-use based controls described in part 744 of the EAR and the embargoes and other special controls described in part 746 of the EAR).

As amended by this final rule, the Saving Clause for the August 7, 2014, NSG Plenary rule now reads as follows (note that the “regulatory action” referred to, therein, is the August 7, 2014, NSG Plenary rule and not this final rule).

Except for ECCN 3A225 items (described below) that were classified as EAR99 prior to the effective date of this rule, shipments of items removed from eligibility for export or reexport under a license exception or without a license (i.e., under the designator “NLR”) as a result of this regulatory action that were on dock for loading, on lighter,

laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on September 8, 2014, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before September 22, 2014. Any such items not actually exported or reexported before midnight, on September 22, 2014, require a license in accordance with this regulation.

Shipments of those ECCN 3A255 items removed from eligibility for export or reexport under a license exception or without a license (i.e., under the designator “NLR”) as a result of this regulatory action (specifically, the removal of the “harmonic distortion parameter” that was in ECCN 3A225.c prior to August 7, 2014) that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on February 9, 2015, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before February 23, 2015. Any such items not actually exported or reexported before midnight, on February 23, 2015, require a license in accordance with the license requirements specified in ECCN 3A225.

“Deemed” exports of “technology” and “source code” removed from eligibility for export under a license exception or without a license (under the designator “NLR”) as a result of this regulatory action may continue to be made under the previously available license exception or without a license (NLR) before November 5, 2014. Beginning at

midnight on November 5, 2014, such “technology” and “source code” may no longer be released, without a license, to a foreign national subject to the “deemed” export controls in the EAR when a license would be required to the home country of the foreign national in accordance with this regulation.

***Amendments to the EAR to correct errors in the August 7, 2014, NSG Plenary Rule.***

*Addition of Mexico to Country Group A:4.*

The August 7, 2014, final rule contained an error in the amendatory instruction for Supplement No. 1 to part 740 of the Export Administration Regulations (EAR). The amendatory instruction stated that the country, Mexico, was being added to Country Group A when, in fact, it should have indicated that the existing Country Group A entry for Mexico was being revised to include Mexico in Country Group A:4 (Nuclear Suppliers Group). At the time that BIS’s August 7, 2014, final rule was published, Mexico was already listed in Country Group A (specifically, under Country Group A:3 – Australia Group), as a result of an amendment contained in a final rule that BIS published on March 26, 2014 (79 FR 16664).

As a result of the amendment made by this final rule, Supplement No. 1 to part 740 of the EAR now lists Mexico under both Country Group A:3 (Australia Group) and Country Group A:4 (Nuclear Suppliers Group). With the addition of Croatia, Estonia, Iceland, Lithuania, Malta and Serbia to Country Group A:4 (by the August 7, 2014, final rule) and Mexico (by this final rule), all of the countries whose governments participate in the NSG, except the People’s Republic of

China, are now listed in Country Group A:4.

*Control of Radiation-hardened TV cameras under ECCN 6A203.*

The August 7, 2014, final rule also inadvertently omitted intended control language from the amendments to Export Control Classification Number (ECCN) 6A203. Specifically, the August 7, 2014, final rule inadvertently omitted from the List of Items Controlled under ECCN 6A203 certain radiation-hardened TV cameras and lenses therefor that were controlled under ECCN 6A203.c prior to the amendments made by that final rule. This final rule amends ECCN 6A203 to add these items under a new paragraph .d. In addition, this rule adds a related Technical Note immediately following ECCN 6A203.d. As a result of this amendment, ECCN 6A203.d controls “radiation-hardened TV cameras, or lenses therefor, ‘specially designed’ or rated as radiation hardened to withstand a total radiation dose greater than  $50 \times 10^4$  Gy (silicon) without operational degradation.”

## **Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of

Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694-0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS-748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the “ADDRESSES” section of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (See 5 U.S.C. 553(a)(1)). The changes contained in this rule are technical amendments of a previously published rule that has already been exempted from notice and



comment and delay in effective date provisions, because the content of the August 7, 2014, final rule involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)).

The amendments contained in this final rule are essential to ensuring the accurate and complete implementation of the August 7, 2014, final rule. Therefore, this regulation is issued in final form.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Therefore, no regulatory flexibility analysis is required and none has been prepared.

## **List of Subjects**

### *15 CFR Part 740*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

### *15 CFR Part 774*

Exports, Foreign trade, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 740 and 774 of the Export Administration Regulations (15 CFR parts 730-774) are amended by making the following correcting amendments.

**PART 740 - [AMENDED]**

1. The authority citation for 15 CFR Part 740 continues to read as follows:

*Authority:* 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*;  
E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001  
Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

2. In Supplement No. 1 to Part 740, Country Groups, Country Group A is amended by revising the entry for “Mexico” to read as follows:

## Supplement No. 1 to Part 740--COUNTRY GROUPS

### Country Group A

| Country   | [A:1] | [A:2]<br>Missile<br>technology<br>control<br>regime | [A:3]<br>Australia<br>group | [A:4]<br>Nuclear<br>suppliers<br>group | [A:5] | [A:6] |
|-----------|-------|---|-----------------------------|--|-------|-------|
| * * * * * |       |   |                             |  |       |       |
| Mexico    |       |   | X                           | X                                      |       |       |
| * * * * * |       |   |                             |  |       |       |

**PART 774 - [AMENDED]**

3. The authority citation for 15 CFR Part 774 continues to read as follows:

*Authority:* 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

4. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6 Sensors and Lasers, ECCN 6A203 is amended by adding a new paragraph .d and a Technical Note at the end of the “Items” paragraph, under the List of Items Controlled section, to read as follows:

**Supplement No. 1 to Part 774 – The Commerce Control List**

\* \* \* \* \*

**6A203 High-speed cameras, imaging devices and “components” therefor, other than those controlled by 6A003 (see List of Items Controlled).**

\* \* \* \* \*

**List of Items Controlled**

*Related Controls:* \* \* \*

*Related Definitions:* \* \* \*

*Items:*

\* \* \* \* \*

d. Radiation-hardened TV cameras, or lenses therefor, “specially designed” or rated as radiation hardened to withstand a total radiation dose greater than  $50 \times 10^4$  Gy (silicon) without operational degradation.

***Technical Note:*** The term Gy (silicon) refers to the energy in Joules per kilogram absorbed by an unshielded silicon sample when exposed to ionizing radiation.

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Kevin J. Wolf

Assistant Secretary

for Export Administration